

**A RESOLUTION**

**BY** *CLAIR MULLER* *Clair Muller*  
*Honored Shook* *Natalie Archibald*

**A RESOLUTION RATIFYING THAT CERTAIN  
MEMORANDUM OF UNDERSTANDING  
AMONG THE CITY OF ATLANTA, UNITED  
WATER SERVICES ATLANTA LLC AND  
UNITED WATER RESOURCES INC.  
CONCERNING THE SETTLEMENT OF  
CERTAIN FINANCIAL CLAIMS AMONG THE  
PARTIES EXISTING PRIOR TO JANUARY 1,  
2003 UNDER A TWENTY-YEAR OPERATIONS  
AND MAINTENANCE AGREEMENT OF  
SYSTEM; AN FOR OTHER PURPOSES.**

**WHEREAS**, the City, United Water Services Atlanta LLC ("UWSA"), and United Water Resources Inc. ("United Water Resources") entered into a Twenty-Year Operations and Maintenance Agreement of System ("O&M Agreement") on December 24, 1998;

**WHEREAS**, the Commencement Date of the O&M Agreement between the parties was January 1, 1999;

**WHEREAS**, pursuant to the O&M Agreement, UWSA agreed, among other things, to operate and maintain the City's Drinking Water System;

**WHEREAS**, the City retained ownership of the System;

**WHEREAS**, United Water Resources and its affiliate, Ondeo Services North America, Inc., f/k/a Lyonnaise American Holding, Inc., executed an unconditional guaranty of UWSA's obligations under the O&M Agreement;

**WHEREAS**, the City, UWSA, and United Water Resources now desire to amicably dissolve their partnership under the O&M Agreement and to effect an orderly transition of the operation and maintenance of the System and certain employees of UWSA to the City, pursuant to the process set forth in that certain letter agreement ("Letter Agreement") by and among the City's Mayor, and Michael Chesser and Troy Henry, on behalf of UWSA and United Water

Resources, dated January 22, 2003, a copy of which is included in Exhibit 1 attached to this Resolution;

**WHEREAS**, the Letter Agreement contemplates that the parties will pursue discussions concerning the dissolution of the Agreement in two stages, the first stage requiring agreement between the parties no later than Friday, January 24, 2003, on the global settlement of all issues, financial disputes, controversies and claims existing among the parties and arising on or before December 31, 2002 (collectively, the "Existing Claims");

**WHEREAS**, the second stage of the discussions between the parties contemplates that, if the parties are able to reach a global settlement of the Existing Claims, then the global settlement will be reduced to writing in the form of this MOU and the parties will move forward and engage in discussions to reach an agreement acceptable to both parties on terms that will govern the amicable dissolution of the O&M Agreement and the transition of the operation and maintenance of the City's System and certain employees of UWSA to the City, including, but not limited to, any financial terms related to that dissolution and transition;

**WHEREAS**, the City, UWSA, and United Water Resources have discussed the settlement of the Existing Claims and have reached agreement on those issues;

**WHEREAS**, the specific agreement reached between the City, UWSA and United Water Resources was tentatively executed by the City's Mayor, on behalf of the City, and Michael Chesser and Troy Henry, on behalf of UWSA and United Water Resources; that Memorandum of Understanding (the "Existing Claims MOU") is attached as Exhibit 1.

**WHEREAS**, the Existing Claims MOU provides for the payment by UWSA of \$6 million in settlement of the City's Existing Claims against UWSA and the payment by the City to UWSA of \$1 million in settlement of UWSA's Existing Claims against the City;

**WHEREAS**, the City now desires to ratify the terms of the Existing Claims MOU;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA THAT** the terms and conditions set forth in the Existing Claims MOU attached to this Resolution as Exhibit 1 are ratified and approved in all respects.

**EXHIBIT 1**

## **MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING ("MOU"), dated January 24, 2003, is entered into by and among THE CITY OF ATLANTA ("The City"), a legally created and existing municipal corporation of the State of Georgia, UNITED WATER SERVICES ATLANTA LLC ("UWSA"), a limited liability company organized and existing under the laws of the State of Georgia with its principal place of business in Atlanta, Georgia, and UNITED WATER RESOURCES, a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Harrington Park, New Jersey.

### **BACKGROUND**

1. The City, UWSA, and United Water Resources entered into a Twenty-Year Operations and Maintenance Agreement of System ("O&M Agreement") on December 24, 1998.
2. The Commencement Date of the O&M Agreement between the parties was January 1, 1999.
3. Pursuant to the O&M Agreement, UWSA agreed, among other things, to operate and maintain the City's System (a term defined in the O&M Agreement). The City retained ownership of the System.
4. United Water Resources and its affiliate, Ondeo Services North America, Inc., f/k/a Lyonnaise American Holding, Inc., executed an unconditional guaranty of UWSA's obligations under the O&M Agreement.

5. The City, UWSA, and United Water Resources now desire to dissolve amicably their partnership under the O&M Agreement and amicably transition the operation and maintenance of the System and certain employees of UWSA to the City, pursuant to the process set forth in that certain letter agreement ("Letter Agreement") by and among the City's Mayor, on behalf of the City, and Michael Chesser and Troy Henry, on behalf of UWSA and United Water Resources, dated January 22, 2003, a copy of which is attached as Exhibit 1.

6. The Letter Agreement contemplates that the parties will pursue discussions concerning the dissolution of the Agreement in two stages, the first stage requiring agreement between the parties no later than Friday, January 24, 2003, on the global settlement of all issues, financial disputes, controversies and claims existing among the parties and arising on or before December 31, 2002 (collectively, the "Existing Claims").

7. The second stage of the discussions between the parties contemplates that, if the parties are able to reach a global settlement of the Existing Claims, then the global settlement will be reduced to writing in the form of this MOU and the parties will move forward and engage in discussions to reach an agreement acceptable to both parties, no later than Friday, January 31, 2003, (unless such time period is mutually extended by the parties) on terms that will govern the amicable dissolution of the O&M Agreement and the transition of the operation and maintenance of the City's System and certain employees of UWSA to the City, including, but not limited to, any financial terms related to that dissolution and transition (the "Mutual Dissolution Agreement").

8. The City, UWSA, and United Water Resources have discussed the settlement of the Existing Claims and have reached agreement on those issues.

### SUMMARY OF TERMS

NOW, THEREFORE, the City, UWSA, and United Water Resources confirm their mutual understandings to date, in accordance with the intent of the Letter Agreement, to facilitate further discussions regarding the desired amicable dissolution of the O&M Agreement and amicable transition of the operation and maintenance of the City's System and certain employees of UWSA to the City, including but not limited to the financial issues associated with the transition period.

#### **A. General Terms**

1. Intentions of the Parties. The City, UWSA, and United Water Resources each confirm their intention to attempt to reach an agreement acceptable to both parties concerning the amicable dissolution of the O&M Agreement between the parties and the transition of the operation and maintenance of the City's System and certain employees of UWSA to the City. If such discussions result in an agreement concerning the dissolution of the O&M Agreement and the transition of the operation and maintenance of the City's System and certain employees of UWSA to the City that is satisfactory to each party, each party agrees to work in good faith to obtain the necessary and appropriate internal approvals, including without limitation the approvals set forth in paragraph (A)(3) below.

2. Term. This MOU will remain in effect until the earlier to occur of the following: (i) the parties' failure to reach a tentative agreement for the amicable

dissolution of the O&M Agreement and amicable transition of the operation and maintenance of the City's System and certain employees of UWSA to the City on or before January 31, 2003 (unless such time period is mutually extended by the parties); or (ii) the full execution by the parties, and any other required signatories, of the Mutual Dissolution Agreement concerning the amicable dissolution of the O&M Agreement and amicable transition of the operation and maintenance of the City's System and certain employees of UWSA to the City.

3. Contractual Limitations on City's Settlement Authority This MOU reflects the parties' current mutual understanding and facilitates further discussions to reach an agreement acceptable to both parties governing the amicable dissolution of the O&M Agreement and amicable transition of the operation and maintenance of the City's System and certain employees of UWSA to the City. The parties acknowledge that this MOU is subject to the limitations set forth in City of Atlanta v. Black, 457 S.E.2d 551 (Ga. 1995), and has no binding effect on the City until the definitive Mutual Dissolution Agreement is: (i) adopted by the City's Council; (ii) approved by the City's Mayor; (iii) executed by UWSA and its appropriate affiliates; (iv) executed by the Mayor of the City of Atlanta; (v) attested to and sealed by the City's Municipal Clerk; (vi) approved by the City Attorney as to form; and (vii) delivered to UWSA. UWSA and United Water Resources acknowledge that the purpose of this MOU is to express the parties intent as to certain matters to be submitted eventually to the City's Council and Mayor if, subsequent to its execution, the parties are further able to reach an agreement as to the terms and conditions of the Mutual Dissolution Agreement concerning the dissolution of the O&M

Agreement and the transition of the operation and maintenance of the City's System and certain employees of UWSA to the City.

**B. Terms of Understanding**

1. Payments. UWSA will, within 30 days of the execution of the global Mutual Dissolution Agreement contemplated by the Letter Agreement and this MOU, remit to the City in immediately available funds a payment in the amount of \$6,000,000.00 in settlement of the Existing Claims. Additionally, the City will, within 30 days of receipt of an invoice (to be submitted no earlier than five (5) days after the execution of the Mutual Dissolution Agreement) from UWSA for claims and expenses incurred by UWSA prior to December 31, 2002, from the Existing Claims of UWSA, remit to UWSA in immediately available funds as payment of said invoice, an amount not to exceed \$1,000,000.

2. Existing Claims Satisfied. Each of the parties acknowledges that the payments contemplated by this MOU will satisfy the global resolution of all Existing Claims, except that the parties acknowledge and agree that the City owes and will pay to UWSA the amount of \$3,830,608, for the November and December 2002 base Operation and Maintenance Fee and that this shall not be considered an Existing Claim, and except for agreements that may be reached among the parties concerning financial matters relating to the transition period.

3. No Admission of Liability. The parties agree that this MOU shall not constitute an admission of fault or liability by the City, UWSA or United Water Resources.



4. Transition. The parties have agreed that all matters arising from January 1, 2003 forward, including the length of the Transition Period, will be regarded as transition issues and will be the subject of an agreement acceptable to the City, UWSA, and United Water Resources.

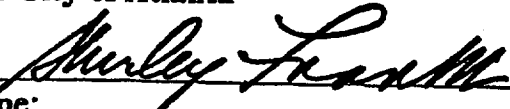
**C. Miscellaneous.**

1. Governing Law. This MOU will be governed by and construed in accordance with the laws of the State of Georgia.

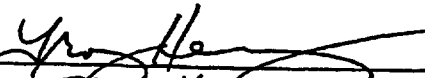
2. Affirmation of O&M and Letter Agreements. The parties acknowledge and agree that this MOU does not amend or modify the terms of the O&M Agreement or the Letter Agreement, both of which remain in full force between the parties as of the date of the execution of this MOU. Each party agrees to continue to abide by the terms of the O&M Agreement and Letter Agreement until such time as it is dissolved.

Agreed to and signed by the City, UWSA, and United Water Resources in multiple original documents as of the date first above written.

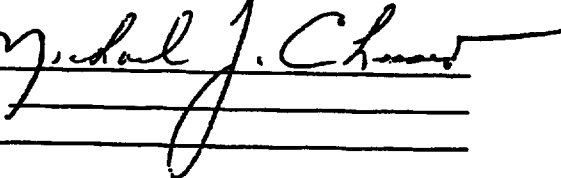
**The City of Atlanta**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**United Water Services Atlanta Unlimited LLC**

By:   
Name: TROY HENRY  
Title: PRESIDENT

**United Water Resources**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_